

**Borough of Highlands  
Zoning Board of Adjustment  
Regular Meeting  
December 4, 2008**

Mr. Mullen called the meeting to order at 7:49 P.M.

Mr. Mullen asked all to stand for the Pledge of Allegiance.

Mr. Mullen made the following statement: As per requirement of P.L. 1975, Chapter 231. Notice is hereby given that this is a Regular Meeting of the Borough of Highlands Zoning Board and all requirements have been met. Notice has been transmitted to the Courier, the Asbury Park Press and The Two River Times. Notice has been posted on the public bulletin board.

**ROLL CALL:**

**Present: Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Gallagher, Mr. Mullen,  
Mr. Britton**

**Absent: Mr. Fox, Mr. Anthony**

**Also Present: Carolyn Cummins, Board Secretary  
Greg Baxter, Esq., Borough Attorney  
Louis Tedesco, P.E. of CMX Engineering**

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**ZB#2007-7 231 Bay Avenue  
Block 63 Lot 19.01 – 231 Bay Avenue  
Request for Postponement to January 15, 2009**

Mr. Mullen stated that the Board received a request for another postponement.

Mr. Baxter spoke to the Board about adopting a Resolution for this adjournment.

The Board had a discussion about this application and all of the requests for adjournments.

Mr. Gallagher offered the following Resolution and moved on its adoption:

**RESOLUTION GRANTING ADJOURNMENT OF  
231 BAY AVENUE APPLICATION, ON CONDITIONS**

**WHEREAS**, the Board first reviewed the application of 231 Bay Avenue, LLC at its meeting on October 4, 2007, and listed the matter for hearing on December 6, 2007; and

**WHEREAS**, the applicant subsequently requested and obtained four adjournments of the matter (firstly to February 7, 2008; secondly to March 6, 2008; thirdly to April 3, 2008; and fourthly to May 1, 2008); and

**WHEREAS**, the Board heard testimony in the case on the evening of May 1, 2008, and continued the matter to be heard on July 17, 2008; and

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**WHEREAS**, the applicant subsequently requested and obtained three further adjournments (fifthly to October 2, 2008; sixthly to November 6, 2008; and seventhly to December 4, 2008); the last adjournment request having been granted on condition that the applicant re-notice; and

**WHEREAS**, the matter was most recently scheduled to be continued on December 4, 2008, but the applicant has requested a further adjournment to January 15, 2009; and

**WHEREAS**, the granting of this most recent adjournment request will be the eighth adjournment of this application, all adjournments having been requested by the applicant; the matter is now approximately fifteen months old; and it has been more than seven months since the first evening of hearings in this matter; and

**WHEREAS**, the Board has determined that it is unreasonable to continue a matter on the Board's agendas for this length of time without the matter having been concluded; and has determined that, in granting the most recent adjournment request by the applicant (from December 4, 2008, to January 15, 2009), there will be no further adjournments granted in this matter;

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Borough of Highlands that the request of 231 Bay Avenue, LLC for an adjournment of its variance application hearing in Case ZB #2007-7 is hereby granted, the matter now being scheduled to be heard on January 15, 2009, subject to the following conditions:

1. No further adjournments will be granted.
2. If the applicant does not proceed on January 15, 2009, the Board will dismiss the case for failure to prosecute.
3. The applicant must re-notice and re-publish prior to the January 15, 2009, hearing date.
4. If the applicant has made, or is making, any changes to the plans or application previously filed with the Board, such amended plans and/or amended application must be filed with the Board Secretary no later than Monday, January 5, 2009.

Seconded by Mr. Francy and adopted on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Gallagher, Mr. Britton,  
Mr. Mullen

**NAYES:** None

**ABSTAIN:** None

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**ZB#2008-7 Domagala, Karol  
Block 21 Lot 16.01 – 90 Highland Avenue  
Request for Postponement to January 15, 2009**

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Mr. Mullen stated that the Board received a first request from the applicant for a postponement of the public hearing to the January 15, 2009 meeting.

Mr. Mullen offered a motion to approve the postponement request to the January 15, 2009 meeting, seconded by Mr. Gallagher and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Gallagher, Mr. Britton,  
Mr. Mullen

**NAYES:** None

**ABSTAIN:** None

The Board then had a discussion about the order of hearings for the January 19, 2009 Meeting and determined it to be as follows:

1. Pace
2. Domagala
3. 231 Bay Avenue

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**ZB#2008-6 Lentz, Douglas  
Block 51 Lots 1 & 2 – 3 Cornwall Street  
Hearing on New Business**

**Present: Douglas Lentz**

The following documents were marked into evidence:

- A-1: Variance Application, 3 Pages;
- A-2: Zoning Permit Denial dated 11/8/08;
- A-3: Architectural Plans by A. Busch, Jr., 3 Pages dated 9/22/08;
- A-4: R. Stockton Survey dated 9/15/08 and revised on 11/17/08;
- A-5: December 1, 2008 T & M Letter from R. Keady – Flood Plain Review;
- B-1: Email Communications to D. Leubner of T & M Associates
- B-2: CMX Engineering Review Letter dated 11/20/08.

Mr. Mullen stated that there is an existing porch there which is considered lot coverage and he is enclosing the existing porch and making that part of the interior structure. The applicant is then building a porch outside of that which is the steps that will have a roof over it and that is also considered in the lot coverage and that it was he is calculating in the addition.

Mr. Mullen informed the applicant that Joe May, Board Engineer is not here this evening and is being replaced with Louis Tedesco.

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Mr. Lentz stated that he sent an email to the NJDEP to the Flood Hazard PB Notice and he then spoke to a woman from there and he was informed that by him noticing them that is all that has to happen.

Douglas Lentz of 3 Cornwall Street, Highlands, NJ was sworn in.

Louis Tedesco, P.E. of CMX Engineering was sworn in.

Douglas Lentz stated that he was informed verbally by the NJDEP that he falls under the A-4 section and by notifying them by email his intent to use the Permit by Rule and that is all that needs to happen and she stated that he would not receive a response from them.

Mr. Tedesco explained that the application will increase the building coverage and it will increase the maximum impervious coverage as well. He then stated that the board engineer review came up with additional areas of impervious coverage then what is shown on the applicant's calculations.

Mr. Lentz stated that the calculations were prepared by Richard Stockton.

Mr. Mullen – so his calculation was for additional building coverage not for lot coverage which is impervious surface on the property.

Mr. Mullen – the applicant has variances required and the biggest variance is a use variance because he is adding an addition to a non-conforming structure. So the applicant is seeking to expand an non-conforming use, the residential use.

Mr. Lentz stated that the two lots are adjacent and he receives two separate tax bills for each of these two lots. The deeded owners are the same for both lots.

Mr. Baxter – then they are merged as a matter of law even though they have separate tax bills.

Mr. Lentz stated the following:

1. Cornwall separates his property and the Windansea Restaurant.
2. The restaurant on the subject property is facing the water side and the house is attached to the restaurant.
3. The owner of the two lots is Cornwall Street, LLC and he is the President of that. He and his sister are the LLC.
4. He does not have a problem with a condition being imposed on an approval that the addition cannot be used for the restaurant use.

The Board had a discussion about this condition and it was determined that this condition would not be required.

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Mr. Lentz continued his testimony as follows:

5. His house is a three bedroom house and it will remain a three bedroom house. The house is deteriorated and in need of improvements and he needs more interior space.
6. The Shrewsbury River is in front of the property.

Mr. Mullen – the height of the structure is not going to change and we have been given documents that indicate that there is going to be a change of .5% of change in building coverage. There are a bunch of pre-existing variances needed for this applications such as minimum lot frontage, minimum lot width, minimum front yard setback, minimum side yard setback, minimum building coverage, maximum lot coverage. The building coverage and lot coverage are actually new variances and the last is the use variance.

Mr. Lentz stated that the proposed application will not jeopardize the neighborhood and there would be no negative impact on the surroundings. He feels that it would improve the area.

Mr. Mullen then asked if there were any questions from Mr. Lentz from the public but there were none.

Mr. Mullen asked the public if there were any comments on this application but there were none.

Mr. Mullen – so with the recommendation of the Borough Flood Administrator with regard to flood vents and the documentation from the NJDEP as part of the condition.

The Board discussed the application and conditions.

Mr. Mullen stated that he feels that this is a legitimate and well thought out and well done little application and he feels that it meets the criteria that it does not create any hardship in the neighborhood, it's a benefit to the neighborhood in the long term.

Mr. Mullen offered a motion to approve the application with the conditions of flood vents and the construction department satisfying themselves that there are no further requirements from the NJDEP. Seconded by Ms. Ryan and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Gallagher, Mr. Britton,  
Mr. Mullen

**NAYES:** None

**ABSTAIN:** None

Mr. Baxter informed Mr. Lentz that the Resolution for this approval will be placed on the January 19<sup>th</sup> agenda.

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**Approval of Amendment to the ZB By-Laws**

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Mr. Mullen stated that this amendment is for the change in the number of documents that are submitted to the board from 15 copies to 17 copies.

Mr. Gallagher suggested that amendments be made to require smaller size plans from the applicants.

The Board had a discussion on this issue.

Mr. Mullen stated that the size of the plans are not listed in the By-Laws.

The Board wanted to speak to the Board Engineer about reduced size copies.

Mr. Gallagher suggested that the by-laws be further amended with regard to the order of business to allow for authorization to alter the order of the public hearing to allow the board to get through the smaller cases before larger ones.

The board had a discussion on this matter.

The Board asked the Board Attorney to amend the By-Laws, Section 9 to add language that the order can be made at the discretion of the Chairman at a meeting.

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**Approval of Minutes;**

Ms. Ryan offered a motion to approve the November 6, 2008 Zoning Board Meeting Minutes, seconded by Mr. Braswell and approved on the following roll call vote:

**ROLL CALL:**

**AYES:** Mr. Braswell, Mr. Francy, Ms. Ryan, Mr. Britton, Mr. Mullen  
**NAYES:** None  
**ABSTAIN:** None

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**Communications:**

Mr. Francy stated that this is his last meeting and that he has enjoyed working on this board.

The Board thanked Mr. Francy for all of his years of service.

Mr. Gallagher offered a motion to adjourn the meeting, seconded by Mr. Britton and all were in favor. The Meeting adjourned at 8:43 P.M.

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**CAROLYN CUMMINS, BOARD SECRETARY**

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